THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.13815 of 1996

Dated:05.12.2006

Between
M.Kanaka Rao

…..Petitioner

and

1. Visakhapatnam Port Trust
rep., by its Chairman, Visakhapatnam
and another.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.13815 of 1996

ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to the proceedings No.A1/Mech/Appeal/6219/95, dated 21.11.1995 on the file of the 1st respondent as communicated by covering letter dated 30.11.1995 by the 2nd respondent and to quash the same as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner into service with continuity of service, back wages and all attendant benefits.

It appears that the petitioner joined the services of the 1st respondent-Visakhapatnam Port Trust. While working as Khalasi (Sh) E/M Section in Mechanical Department, he was served with charge Memo dated 28.02.1995 for his unauthorized absence to duty from 29.12.1994 to 5.2.1995. The petitioner submitted his explanation stating that due to health problem, he was unable to attend to duty for 10 days and he was also unable to inform the respondent-authorities. After conducting a detailed

enquiry into the matter, *vide* proceedings dated 12.9.1995 the 2nd respondent removed the petitioner from service. Aggrieved by the same, the petitioner carried the matter in appeal before the 1st respondent. The 1st respondent *vide* proceedings dated 21.11.1995 confirmed the order of the 2nd respondent and rejected the appeal. Aggrieved by the same, the present writ petition is filed.

It is the case of the petitioner that he was appointed on compassionate grounds in view of premature laying down of office by his father on medical grounds. It is his further case that though no medical certificate was submitted, he was taking treatment. Further, the respondents ought to have considered the previous record while imposing the punishment of removal and as such the impugned order is arbitrary and illegal.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner.

After filing the writ petition, the petitioner expired and his legal heirs are brought on record.

There is no necessity to go into all the

details. It is a case of unauthorized absence from service. Without producing any medical certificate, the petitioner has submitted his explanation stating the he was unwell and could not attend the duties. In view of the fact that this is not a case of misconduct or misappropriation of any amounts or irregularities committed by the petitioner while on duty, I am of the opinion that the order passed by the authority for the unauthorized absence, is disproportionate to that of the punishment alleged against the petitioner and the same is liable to be modified and shall be treated as punishment of termination from service.

In the result, the order passed by the 2nd respondent as confirmed by the 1st respondent is modified to be read as termination from service with effect from 21.11.1995 and the petitioner is entitled to all terminal benefits. The respondents are directed to settle the terminal benefits within a period of two months from the date of receipt of a copy of this order.

Writ petition is allowed to the extent indicated above. No costs.

05-12-2006

rkk